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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 3:20-cr-00249-RS
Plaintiff,)	
v.)	UNITED STATES' MOTION TO ALLOW JURY
)	TO USE DEMONSTRATIVE PHOTOS OF
)	WITNESSES TO AID DELIBERATIONS
ROWLAND MARCUS ANDRADE,)	Jury Trial: 8:30 a.m. thru ~Mar. 14, 2025
Defendant.)	Court: Courtroom 3 17th Floor
)	Judge: Hon. Richard Seeborg

The United States moves to allow the jury to use, during deliberations, a demonstrative that contains photos of who testified on each trial day. The defense opposes after a meet-and-confer today. The government will email the proposed demonstrative to the Court for its review.

The government has cleared the low bar for providing this helpful demonstrative. Under recently enacted Rule 107, the Court need only find “good cause” to provide the jury with a demonstrative (which the rule calls “illustrative aids”) during deliberations. Fed. R. Evid. 107(b). “This rule requires the court to assess the value of the illustrative aid in assisting the trier of fact to understand the evidence

1 or argument,” and the rule’s purpose is expressly to give trial courts “some discretion to allow the jury
2 to consider an illustrative aid during deliberations.” *Id.* at Advisory Committee Note to 2024 Enactment.

3 Here, there is good cause because photos of the witnesses, divided by day, will greatly help the
4 jury recall the evidence in this five-week trial. *See, e.g.*, Hon. Robert M. Parker, Chief Judge of E.D.
5 Texas (1990–1994) and Fifth Circuit Judge (1994–2002), *Streamlining Complex Cases*, 10 Rev. Litig.
6 547, 555 (1991) (“One way the court can upgrade the quality of deliberations is by taking a photograph
7 of each witness on the witness stand during actual testimony and then providing these photographs in a
8 notebook for the jury at the conclusion of the trial. The photographs should have the witness’ name and
9 date of testimony to aid the jury in connecting the witness to their notes. It has been reported that this
10 procedure greatly enhances the jury’s powers of recall.”). And witness photos would be especially
11 helpful here. There have been several time gaps in this five-week trial and 35 witnesses across the
12 government’s case-in-chief, the defense’s case, and the government’s rebuttal case.

13 There is also ample precedent for allowing the jury to review photos of testifying witnesses to
14 aid deliberations. The government’s understanding is that the Court has provided such photos to the jury
15 before. *See, e.g., United States v. Kelly et al.*, No. 3:21-cr-00402-RS (*Kelly* and *Makras* trials). So have
16 other courts, even before the clarifying enactment of Rule 107. *See, e.g., United States v. Johnson*, 362 F.
17 Supp. 2d 1043, 1062–63 (N.D. Iowa 2005) (“It is perhaps during deliberations that jurors would be most
18 assisted in recalling the testimony of particular witnesses by having the opportunity to see photographs
19 of those witnesses.”), *aff’d in part*, 495 F.3d 951 (8th Cir. 2007) (no appellate discussion of photos);
20 *United States v. Heppner*, No. CRIM. 05-94JRTFLN, 2006 WL 2228972, at *2 (D. Minn. Aug. 3, 2006)
21 (“The Court provides the jury with names and photographs of testifying witnesses to aid the jury in
22 deliberations.”), *aff’d sub nom. United States v. Heppner*, 519 F.3d 744 (8th Cir. 2008).

23 Accordingly, the United States respectfully asks that the Court:

- 24 1. Permit the jury to use, as an illustrative aid that is not evidence, photographs and names of the
25 witnesses. Concurrent with the filing of this motion, the government will email the Court a copy
26 of its proposed demonstrative, which separates the photos and names by trial day.
- 27 2. Instruct the jury that “the illustrative aid is not evidence and cannot be considered as proof of any
28 fact.” Fed. R. Evid. 107, Advisory Committee Note to 2024 Enactment.

3. Mark the illustrative aid as an exhibit to make it part of the record. *See id.*

DATED: March 10, 2025

Respectfully submitted,

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/s/

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